



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Louisiana Foundation for Medical Care--
Reconsideration
File: B-225576.2

Date: July 2, 1987

DIGEST

Prior decision is affirmed where the protester has failed to show that we erred in concluding that the protester was not prejudiced even though its technical proposal was erroneously scored since the proposal was otherwise unacceptable.

DECISION

Louisiana Foundation for Medical Care (LFMC) requests that we reconsider our decision in Louisiana Foundation for Medical Care, B-225576, Apr. 29, 1987, 87-1 CPD ¶ 451, denying in part and dismissing in part its protest of the award of a contract to Louisiana Health Care Review (LHCR), under request for proposals (RFP) No. HCFA-86-054/BL, issued by the Health Care Financing Administration, Department of Health & Human Services (HHS). The awardee became the utilization and quality peer review organization (PRO) for the Medicare program in the state of Louisiana.

We affirm our prior decision.

LFMC had protested that HHS improperly evaluated proposals, and that its overall proposal was superior to the awardee's. LFMC noted that it was a physician sponsored organization while the awardee was only a physician access organization, that its bid price was \$100,000 less than the awardee's, and that unacceptable features of its proposal could have been resolved with minimal negotiation. We held that LFMC's best and final offer (BAFO) properly was rejected as being technically unacceptable where LFMC failed to rectify technical deficiencies brought to its attention prior to the date for submission of BAFO's. We recognized that an error was made in the technical evaluation when LFMC received only 40 points for its status as a physician sponsored organization rather than the 100 points to which it was entitled, and that LFMC probably would have had a higher technical score than the awardee if no error had been made. We found that LFMC was not prejudiced by the error, however, because its proposal was reasonably found to be unacceptable for its

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deficiencies in treatment of objectives, a major technical evaluation criterion.

HHS had identified for LFMC during discussions what it considered a major area of weakness in LFMC's initial proposal--its intervention plans and trigger points for objectives. According to HHS, trigger points were crucial to the formulation of good objectives, which were crucial to a PRO's success. (An intervention plan is a series of actions which the PRO will take once a provider's practitioner's practice has been targeted for closer scrutiny. Trigger points are those actions which cause a provider or practitioner to warrant closer scrutiny). HHS believed that if trigger points were set too high, providers with utilization or quality problems might not be identified, or conversely, if set too low, providers might inappropriately be selected for closer scrutiny. HHS found LFMC's intervention strategy did not change significantly in its best and final offer, and considered LFMC's proposal unacceptable.

We pointed out that a proposal that has not been made technically acceptable after discussions properly may be rejected after BAFO's and the proposal may not be considered for award, irrespective of the proposed price. We also noted that, since the agency properly found LFMC's proposal technically unacceptable, it did not have any obligation to conduct further negotiations with the firm.

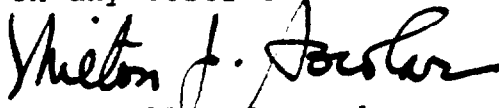
In its request for reconsideration, LFMC asserts that because it should have received a higher number of points than the awardee, it should have been awarded the contract. LFMC argues that since we found that HHS had made an error in the technical evaluation, we must reverse HHS' award decision or recommend that proposals be further evaluated.

LFMC's reliance on the point scores as an indication of its alleged superiority and entitlement to award is misplaced. Numerical point scores, when used for proposal evaluation, are merely guides for intelligent decision-making by selecting officials. Unless a solicitation sets forth a precise numerical formula and provides that a contract will be awarded to the offeror whose proposal receives the highest number of points, award need not be made on that basis. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21. Here, there was no such statement that the highest scored offeror would be awarded a contract.

Regarding LFMC's argument that we should reverse HHS' award decision or recommend that proposals be further evaluated, it is well-settled that a showing of prejudice is an essential part of a protest, and it is incumbent upon a protester to show how it was prejudiced if corrective action

is requested. See KET, Inc.--Request for Reconsideration, B-190983, Jan. 12, 1981, 81-1 CPD ¶ 17. As we noted previously, LFMC was not prejudiced by errors in point scoring because, after discussions, its proposal was reasonably found to be unacceptable for its deficiencies in treatment of objectives, a major technical evaluation criterion. The awardee's proposal was found to be at least minimally acceptable in all evaluation areas.

Since LFMC has not shown that our prior decision was based on any error of fact or law, it is affirmed.

for 
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